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on civil and
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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

JAPAN

1. The Human Rights Committee considered the third periodic report of Japan (CCPR/C/70/Add.1 and Corr.1 and 2) at its 1277th to 1280th meetings held on 27 and 28 October 1993, and adopted[1] the following comments:

A. Introduction

2. The Committee commends the Government of Japan on its excellent report, which has been prepared in accordance with the Committee's guidelines for the presentation of State party reports and submitted on schedule. The Committee appreciates, in particular, the participation, in its consideration of the report, of a competent delegation from the Japanese Government, which consisted of experts in various fields relating to the protection of human rights. The Committee is of the view that the detailed information provided by the delegation in its introduction of the report, as well as the comprehensive replies furnished to the questions raised by the Committee members, contributed greatly to making the dialogue fruitful.

3. The Committee notes with appreciation that the Japanese Government gave wide publicity to its report, thus enabling a great number of non-governmental organizations to become aware of the contents of the report and to make known their particular concerns. In addition, some of them were present during the Committee's consideration of the report.

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1 At its 1290th meeting (forty-ninth session) on 4 November 1993.

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C. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes that the Japanese Government sometimes experiences difficulties in taking measures to implement the Covenant due to various social factors, such as the traditional concept of the different roles of the sexes, the unique relationship between individuals and the group they belong to, and the unconscious particularities due to the homogeneity of the population.

C. Positive aspects

5. The Committee takes note with satisfaction of the serious approach the Japanese Government has taken in dealing with issues relating to civil and political rights, and of its commitment to fulfil its obligations under the Covenant.

6. The Committee is of the view that the human rights situation in Japan has improved since the consideration of the second periodic report of that State party in 1988, and that there is generally a good regard for human rights in the country.

7. Furthermore, the Committee notes, with appreciation, that Japan actively assists in the promotion of human rights at the international level. It also notes that there is awareness in the Japanese society of the provisions of the Covenant; this awareness is confirmed by the interest expressed by many Japanese non-governmental organizations in the Committee's consideration of the third periodic report of Japan.

D. Principal subjects of concern

8. The Committee believes that it is not clear that the Covenant would prevail in the case of conflict with domestic legislation and that its terms are not fully subsumed in the

Constitution. Furthermore, it is also not clear whether the "public welfare" limitation of articles 12 and 13 of the Constitution would be applied in a particular situation in conformity with the Covenant.

9. The Committee expresses concern at the continued existence in Japan of certain discriminatory practices against social groups, such as Korean permanent residents, members of the Buraku communities, and persons belonging to the Ainu minority. The requirement that it is a penal offence for alien permanent residents not to carry documentation at all times, while this does not apply to Japanese nationals, is not consistent with the Covenant. Moreover, persons of Korean and Taiwanese origin, who served in the Japanese Army and who no longer possess Japanese nationality, are discriminated against in respect of their pensions.

10. In addition, the Committee expresses concern at other discriminatory practices that appear to persist in Japan against women, with regard to remuneration in employment, and notes that de facto problems of discrimination more generally continue to exist. The situation regarding mentally ill persons has significantly improved, but problems continue regarding access to employment. The Committee acknowledges the fact that legal measures have been taken by the Japanese authorities to forbid those practices and that there are comprehensive programmes to promote equal opportunity. However, it appears that a certain gap exists in Japan between the adoption of legislation and the actual behaviour of certain sectors of society. The Committee notes that recourse for settlement of claims of discrimination against trade-union activists is very protracted.

11. The Committee is particularly concerned at the discriminatory legal provisions concerning children born out of wedlock. In particular, provisions and practices regarding the birth registration forms and the family register are

contrary to articles 17 and 24 of the Covenant. The discrimination in their right to inherit is not consistent with article 26 of the Covenant.

12. The Committee is disturbed by the number and nature of crimes punishable by death penalty under the Japanese Penal Code. The Committee recalls that the terms of the Covenant tend towards the abolition of the death penalty, and that those States which have not already abolished the death penalty are bound to apply it only for the most serious crimes. In addition, there are matters of concern relating to conditions of detainees. In particular, the Committee finds that the undue restrictions on visits and correspondence, and the failure of notification of executions to the family are incompatible with the Covenant.

13. The Committee is concerned that the guarantees contained in articles 9, 10, and 14 are not fully complied with, in that pre-trial detention takes place not only in cases where the conduct of the investigation requires it; the detention is not promptly and effectively brought under judicial control and is left under the control of the police; most of the time interrogation does not take place in the presence of the detainee's counsel, nor rules exist to regulate the length of interrogation; and the substitute prison system (Daiyo Kangoku) is not under the control of an authority separate from the police. In addition, the legal representatives of the defendant do not have access to all relevant material in the police record, in order to enable them to prepare the defence.

14. The Committee regrets that there appears to be a restrictive approach in certain laws and decisions as to the respect of the right to freedom of expression.

15. The Committee notes with concern the exclusion of Koreans from the Government's concept of minorities. This is not

justified by the Covenant, which does not limit the concept of minority to those who are nationals of the State concerned.

E. Suggestions and recommendations

16. The Committee recommends that Japan becomes a party to both Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. The Committee also recommends that the Japanese legislation concerning children born out of wedlock be amended and that discriminatory provisions contained therein be removed, to bring it into line with the provisions of articles 2, 24 and 26 of the Covenant. All discriminatory laws and practices still existing in Japan should be abolished in conformity with articles 2, 3 and 26 of the Covenant. The Japanese Government should make efforts to influence the public opinion in this respect.

18. The Committee further recommends that Japan takes measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes; that the conditions of death row detainees be reconsidered; and that preventive measures of control against any kind of ill-treatment of detainees should be further improved.

19. With a view to guaranteeing the full application of articles 9, 10 and 14 of the Covenant, the Committee recommends that pre-trial procedures and the operation of the substitute prison system (Daiyo Kangoku) should be made to be compatible with all requirements of the Covenant and, in particular, that all the guarantees relating to the facilities for the preparation of the defence should be observed.